

PR#9833

CRUTCHER, JAMES

12/20/2007

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.
W. A. DREW EDMONDSON,
in his capacity as
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA and
OKLAHOMA SECRETARY OF THE
ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE
FOR NATURAL RESOURCES FOR THE
STATE OF OKLAHOMA,

Plaintiffs,

Vs. No. 05-CV-0329 GKF-SAJ

TYSON FOODS, INC., TYSON
POULTRY, INC., TYSON
CHICKEN, INC., COBB-VANTRESS,
INC., AVIAGEN, INC., CAL-MAINE
FOODS, INC., CAL-MAINE FARMS,
INC., CARGILL, INC., CARGILL
TURKEY PRODUCTION, LLC,
GEORGE'S, INC., GEORGE'S FARMS,
INC., PETERSON FARMS, INC.,
SIMMONS FOODS, INC., and WILLOW
BROOK FOODS, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF JAMES CRUTCHER, M.D.

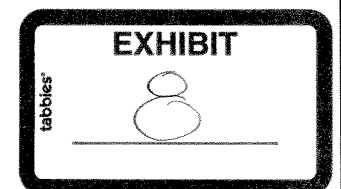
TAKEN ON BEHALF OF THE DEFENDANTS

ON DECEMBER 20, 2007, BEGINNING AT 9:38 A.M.

IN OKLAHOMA CITY, OKLAHOMA

VIDEOTAPED BY: STESHA FERGUSON

REPORTED BY: DANIEL LUKE EPPS, CSR, RPR



1 are there people who I'm calling field
2 investigators who go out and ask questions,
3 gumshoes?

4 A In the county health departments
5 there are what's called communicable disease
6 nurses. They're really not epidemiologists, but
7 they are communicable disease nurses that go by
8 protocols to collect data, and then the state
9 epidemiologists really focus at the state health
10 department and do not get involved in every, you
11 know, disease that's reported to us. Generally
12 only when there is an outbreak or a disease of
13 concern arises, whatever that reason for that is.

14 Q Since you've been involved with the
15 Oklahoma Health Department, has there ever been
16 a, quote, "outbreak," end quote, associated with
17 the Illinois River with which the health
18 department has been concerned?

19 A Not that I'm aware of.

20 Q And since you've been with the
21 health department, has there ever been -- what's
22 the second word you used?

23 A An increase in incidence of disease
24 or --

25 Q Yeah. Has there ever been something

1 like that in the Illinois River Basin with which
2 the health department has been concerned?

3 A Not that I'm aware of. An outbreak,
4 there's not been an outbreak or a disease --
5 elevated levels of disease that have occurred as
6 a result of, you know, being exposed to the
7 Illinois River that I'm aware of.

8 Q All right, sir. So let me return to
9 this issue and see if I can understand what
10 happens. Let's assume -- I'm going to use Jack
11 In The Box because it just happens to be
12 something I remember. Poor Jack In The Box. I
13 don't know if they exist anymore.

14 A I don't know. I haven't seen any.

15 Q I don't see them for some reason,
16 but if you had that kind of a Jack In The Box
17 outbreak, whether that was salmonella or E. coli,
18 whatever it was, are there people that you send
19 out into the field to start interviewing these
20 people who have the disease so that you can
21 actually come to the conclusion that was related
22 to Jack In The Box at 13th and Elm?

23 A Yes.

24 Q Okay. Let's take a break.

25 THE VIDEOGRAPHER: We are off the

1 people aware of the authority that we have that
2 is given to us to do so. Generally that works.
3 If it doesn't, then, you know, we have to proceed
4 through stronger forces ultimately, you know,
5 utilizing court power if necessary.

6 Q And to your knowledge, Doctor, has
7 there ever been a health advisory, my words, and
8 I want you to tell me if that's the wrong
9 terminology, issued by the health department in
10 regard to the safety of the waters of the
11 Illinois River or its tributaries?

12 A Not to my knowledge.

13 Q All right, sir.

14 A Not from the health department.

15 Q Okay. Well, I've got to ask you
16 about that answer. By anybody else to your
17 knowledge?

18 A Not to my knowledge, but I just
19 wanted to say the health department hasn't.
20 Whether the Department of Environmental Quality
21 or Water Resources Board has, I can't say. The
22 health department has not.

23 Q All right. Did I use the right
24 term, health advisory?

25 A Health advisory, yeah.

1 whether any clusters exist?

2 A Yes.

3 Q And I believe based upon the
4 questions you answered a few moments ago that the
5 department has not identified any cluster at any
6 time related to campylobacter within the Oklahoma
7 counties in the Illinois River Watershed, is that
8 correct?

9 A None that I am aware of. Again,
10 Dr. Bradley may have additional information, but
11 I am not aware that there have been specific
12 outbreaks associated there.

13 Q Sir, would your answer be the same
14 for salmonellosis?

15 A Yes.

16 Q And for E. coli?

17 A Yes.

18 Q The next paragraph on that page,
19 Doctor, it says, "In 2004, cases ranged in age
20 from one day to 92 years with a median age of 28
21 years." The next sentence, "Infants and young
22 children had the highest incidence of
23 campylobacter infections." Doctor, can you
24 explain why infants and young children had the
25 highest incident rate?

1 A We provided some of the data.

2 Q Correct. That was a bad question,
3 and you correctly pointed that out. Have the
4 attorneys representing the plaintiffs in this
5 case --

6 A Right.

7 Q -- provided any documentation to the
8 Oklahoma Department of Health associated with
9 this lawsuit?

10 A Other than these affidavits, no.

11 Q Has anyone suggested to you, Doctor,
12 that the Oklahoma Department of Health should
13 issue a health warning advisory for water body
14 contact in the Illinois River Watershed?

15 A That issue has not been discussed.
16 I will say up until now this has been an issue
17 that has primarily been within the realm of the
18 Department of Environmental Quality and the
19 Oklahoma Water Resources Board, and what they
20 have done, I can't speak to. There has not been
21 the suggestion that the health department has
22 done it, and we've not been actively involved in
23 those discussions. I think we will be from here
24 on out, but up until now we've not been.

25 Q All right. I believe my question

1 was has anyone suggested to you that the Oklahoma
2 Department of Health should issue a health
3 advisory --

4 A No.

5 Q -- for water body contact in the
6 Illinois River Watershed?

7 A No.

8 Q Has anyone suggested to you that the
9 Oklahoma Department of Health should issue a
10 health advisory related to the consumption of
11 ground water from water wells located within the
12 Illinois River Watershed?

13 A Not to my knowledge.

14 Q Sir, have you seen any data
15 suggesting that there is widespread bacterial
16 contamination of ground water in the Illinois
17 River Watershed?

18 A There was some information in the
19 affidavits. I have not seen other information.
20 Just what was in the affidavits.

21 Q Sir, to your knowledge, has any
22 water well owner in the Illinois River Watershed
23 been advised that their water is unsafe to drink
24 as a result of bacteria?

25 A Not to my knowledge, but that would

1 cannot tell you that there have been cases of
2 human disease that have resulted from that, but,
3 you know, that's certainly concerning that there
4 are excessive levels of pathogenic organisms in
5 water supplies in the state.

6 Q There is -- the state of Oklahoma
7 virtually from one end to the other has a problem
8 with bacteria contamination in surface waters,
9 doesn't it?

10 A I can't -- I can't answer that.

11 Q You don't know?

12 A I don't know that. Huh-uh.

13 Q And you don't know that the Illinois
14 River waters are any more -- excuse me. Let me
15 go back to the question that I asked where you
16 gave the prior answer. You stated you have
17 concern when you see elevated bacteria in water.
18 That's your job to be concerned, but my question
19 was are you aware of any data to suggest that it
20 is poultry litter that is causing any elevated
21 health risk in the Illinois River Watershed?

22 A I personally am not aware of data.
23 You know, looking at the affidavits and the
24 opinions of the experts that are based upon the
25 data that was provided to them is the information

1 investigate or assist in the investigation of a
2 human health risk posed by bacteria levels in
3 surface water or ground water in the Illinois
4 River Watershed?

5 A Over the last year, I mean, since
6 the -- I guess the beginning of this issue, we
7 have been involved with the Secretary of the
8 Environment in his role and representatives from
9 the Department of Environmental Quality.

10 Q Let me refine my question a bit,
11 sir. Prior to the initiation of this lawsuit,
12 had the department of health been requested by
13 any other state agency to investigate or assist
14 in the investigation of a human health risk posed
15 by bacteria levels in surface water or ground
16 water in the Illinois River Watershed?

17 A Not to my knowledge.

18 Q And, in fact, sir, is it true that
19 your department was not asked to conduct such an
20 investigation immediately prior to the filing of
21 this lawsuit?

22 A Not a more in-depth -- no. Prior
23 to, I mean, we would ask for information at the
24 time that this began and we were called in to
25 participate, but prior to that, you're saying

1 in a disease incidence in a particular county, do
2 I understand that your department has both the
3 authority and the obligation to investigate those
4 statistically significant elevations in disease?

5 A Yes. I mean, there's no firm
6 guideline as to when that has to take place.
7 It's certainly within -- we have a bit of
8 latitude to, you know, use the knowledge that we
9 have to determine whether we think it is a
10 significant increase in disease to determine
11 whether we launch into an investigation.

12 Q Okay. In your 12 years at the
13 department of health, has your department ever
14 taken any action that you're aware of based on a
15 belief that Adair, Cherokee, Delaware, or
16 Sequoyah Counties were experiencing a
17 statistically significant elevated rate of
18 campylobacteriosis?

19 A No.

20 Q Okay. In your 12 years at the
21 department, has the department of health ever
22 taken any action that you're aware of based upon
23 a belief that Adair, Cherokee, Delaware, and
24 Sequoyah counties were experiencing a
25 statistically significant elevated rate of

1 salmonellosis? I have a hard time saying that.

2 A No.

3 Q If I ask the same question with
4 regard to E. coli, would your answer be the same?

5 A Yes.

6 Q When information is available to
7 your department, sir, that suggests an imminent
8 and substantial threat to human health, does your
9 department regularly issue warnings or public
10 advisories?

11 A Yes.

12 Q Okay. I noticed in looking through
13 some materials from your website that I've put
14 before you that your department apparently uses
15 its website as you would imagine as a
16 communication vehicle and as a result of that
17 posts its notices on the website, correct?

18 A Yes.

19 Q And I won't ask you to do this. I
20 went through just for 2007 to see how prolific
21 your department had been in issuing notices and I
22 came to about 150. Do you have any reason to
23 disagree with that range in terms of the extent
24 to which your department issues notices informing
25 the public of health risks?

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1 A Notices through the media primarily.

2 Q I only counted the ones on the
3 website.

4 A Yeah. That's certainly within the
5 realm of possible, yeah.

6 Q Okay. And I've put in front of you
7 not just 2007, but prior years going back to
8 2000. It looks to me as though that's a pattern
9 in terms of communication within your department
10 for at least the last seven years, correct?

11 A Yes.

12 Q Okay. In your 12 years at the
13 department, are you aware of the department of
14 health issuing any warnings or public advisories
15 suggesting or informing the public to avoid body
16 contact with the waters in Tenkiller, the
17 Illinois River or its tributaries due to a belief
18 that those waters contained dangerous levels of
19 bacteria?

20 A No.

21 Q In your 12 years at the department
22 of health, are you aware of any warning or public
23 advisories issued by your department advising the
24 public that ground water in the counties that
25 comprise the Illinois River Watershed are not

1 safe to drink due to a belief that those waters
2 contain dangerous levels of bacteria?

3 A Not to my knowledge.

4 Q What is the RHINO system? Is that
5 acronym familiar to you?

6 A Yeah. It's a reporting system for
7 infectious diseases.

8 Q Who receives the reports on the
9 RHINO system?

10 A The communicable disease area, Lauri
11 Smithee and the people that do the infectious
12 disease investigations.

13 Q Is the RHINO system a vehicle
14 through which the department of health exchanges
15 information with physicians and health care
16 providers?

17 A I probably should -- I think Kristy
18 Bradley can answer that question. I can't tell
19 you the specifics of communication pathways
20 there.

21 Q That's fine. If the department of
22 health were aware of an imminent and substantial
23 threat to human health from exposure of
24 individuals to dangerous levels of bacteria in
25 the waters in Lake Tenkiller, the Illinois River